

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

§

§

vs.

§

Case No. 4:06cr154

§

(Judge Schell)

DAVID MICHAEL O'LEARY

§

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 14, 2006 to determine whether the Defendant violated his supervised release. The Defendant was represented by Robert Arrambide. The Government was represented by Steven Buys.

On August 18, 2005, the Defendant was sentenced by the Honorable Christopher C. Conner of the Middle District of Pennsylvania to time already served followed by two years of supervised release after pleading guilty to the offense of Theft of Postal Money Orders. On August 18, 2005, Defendant completed his period of imprisonment and began service of his supervised term.

On June 12, 2006, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. The petition asserted that the Defendant violated the following conditions: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and

shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; (3) Defendant shall notify the probation officer at least ten days prior to any change in residence or employment; (4) Defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer; (5) Defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer until released from the program by the probation officer; (6) Defendant shall regularly attend Alcoholics Anonymous meetings and report to the probation officer as directed by the probation officer; (7) Defendant shall pay restitution in the amount of \$1844.40 in minimum monthly installments of no less than \$50.00, with the balance payable in 2 years.

The petition alleges that the Defendant committed the following acts: (1) On October 22, 2005, Defendant was arrested and charged with Driving While Intoxicated and Duty Upon Striking by local police in The Colony, Texas; (2) Defendant posted bond and was released but did not meet conditions of the bond, and a warrant was issued for his arrest; (3) Defendant failed to notify the probation officer at least 10 days prior to his moving to The Colony, Texas on October 28, 2005; (4) Defendant failed to notify the probation officer within 72 hours of his arrest on October 22, 2005; (5) Defendant failed to participate in counseling on November 22, 2005; (6) Defendant failed to report and submit a urine specimen on November 21 and 22, 2005; (7) Defendant failed to call the random drug testing line on

November 2, 4, 5, 6, 7, 16, 22, and 23, 2005; (8) Defendant failed to attend Alcoholics Anonymous 3 times a week; (6) Defendant failed to pay restitution for October, November, and December 2005 and January 2006 and the restitution balance remains at \$1,844.40.

Prior to the Government putting on its case, the Defendant entered a plea of true to the above listed violations except violation (2) (standard condition seven) as charges are currently pending. At the hearing, the Court recommended that the Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eleven (11) months, with no supervised release to follow. It is further recommended that the Defendant be ordered to pay restitution of \$1,844.40, due immediately, payable by cashier's check or money order made out to the United States District Court and forwarded to the Fine and Restitution Section, U.S. Courts, P.O. Box 570, Tyler, Texas 75710.

Signed this 17 day of August, 2006.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE